

**RESOLUTION NO. 75008**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE GIVING ITS CONSENT, RETROACTIVE TO MARCH 26, 2009, TO THE REQUEST OF GONSALVES & STRONCK CONSTRUCTION COMPANY TO SUBSTITUTE ITSELF AND JOSEPH J. ALBANESE CONSTRUCTION FOR GENERAL DEVELOPMENT INDUSTRIES, INC., THE LISTED SUBCONTRACTOR FOR THE CONCRETE WORK**

**WHEREAS**, on June 23, 2009, the City Council conducted a hearing in accordance with Section 2-1.15B of the City of San Jose Department of Public Works Standard Specifications (July 1992) on whether to consent to the request of Gonsalves & Stronck Construction Company ("G&S") to substitute itself and Joseph J. Albanese Construction for General Development Industries, Inc. ("GDI"); and

**WHEREAS**, as part of the hearing the City Council received and considered the following: (1) numerous documents from G&S and GDI, all of which are part of the public record, submitted in support of their respective positions, and (2) the reports and recommendation of the Director of Public Works; and

**WHEREAS**, the City Council allowed all persons to be heard and to present additional arguments and evidence at the hearing.

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

- I. After considering the evidence presented to the City Council at the hearing, the City Council finds that the following are the relevant facts with regard to resolving the matter:

- A. On or about May 20, 2008, the City awarded a contract to G&S to construct the Seven Trees Community Center and Library Project ("Project").
- B. In its bid, G&S listed GDI as the subcontractor that would perform work consisting of constructing tilt-up concrete panels.
- C. In a letter dated March 12, 2009 from GDI to G&S, GDI states that it will no longer continue working on the Project based on G&S's lack of payment of a January invoice.
- D. In its letter dated May 27, 2009 to the City, GDI states that it suspended performance under its subcontract with G&S because of G&S's lack of payment of a January invoice.
- E. GDI has not performed work on the Project since about March, 2009.
- F. GDI submitted a stop notice to the City claiming that the amount of \$497,671.71 is due and owing from G&S under the subcontract.
- G. In its documents, G&S states that it has paid GDI a total of \$906,444 as of February 27, 2009 and that no moneys are due and owing.
- H. In its documents, G&S states that the amount paid is approximately 70 percent of the total gross subcontract amount and that GDI has completed approximately 70 percent of the work required under the subcontract.
- I. Since March, 2009, the City has received a number of stop notices from subcontractors and/or suppliers of GDI claiming that GDI has not paid them for work they have performed.
- J. On or about March 26, 2009, G&S requested to substitute itself and/or another contractor for GDI based upon GDI's failure to perform.
- K. On April 3, 2009, the City received a letter from GDI stating that it did not consent to the substitution requested by GDI.

- II. The City Council concludes and finds, based on the analysis of the above facts in regard to G&S's request for substitution:
- A. Pursuant to Section 2-1.15B.1(c) of the City of San Jose Department of Public Works Standard Specifications (July 1992), the City Council may consent to G&S's substitution request if it determines that GDI failed or refused to perform its subcontract.
  - B. As GDI readily concedes, it has not performed any work under its subcontract since early March, 2009.
  - C. Section 2-15B.1(c) does not require the City to determine if GDI's failure to perform is or is not justified or to otherwise determine the validity of the payment dispute between G&S and GDI, which the City is not – in any event – in a position to do.
- III. Based on the above-stated findings, the City Council concludes as follows:
- A. The City Council may consent to G&S's substitution request pursuant to Section 2-1.15B.1(c) of the Standard Specifications based on GDI's failure to perform its subcontract.
  - B. The facts providing the basis for the City Council to consent to G&S's substitution request existed as of March 26, 2009.

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- IV. For all of the above reasons, the City Council hereby consents, retroactive to March 26, 2009, to the request of G&S to substitute itself and Joseph J. Albanese Construction for GDI.

ADOPTED this 23<sup>rd</sup> day of June, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk